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IN THE

Supreme Court of the United States

OCTOBER TERM—1948.

No. 655

UNITED STATES OF AMERICA, *ex rel.*, ANNA DORFLER, GEORGE DORFLER, CHRISTIAN EHMANN, JOHANNES CARL FITTING, ADOLF GOELZER, OTTO GRIMM, HANS WERNER HAUSWALD, JOHANNES T. JUHL, PETER SCHAU and AGNES STEPHAN,

Petitioners,

—v.—

W. FRANK WATKINS, as District Director of Immigration and Naturalization of the United States for the District of New York, etc.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

JOSEPH W. SOLOMON,
Barlum Tower,
Detroit, Michigan,
Counsel for Petitioners.

INDEX

PAGE

PETITION FOR A WRIT OF CERTIORARI 1

Opinion Below 2

Jurisdiction 2

Questions Presented 2

Statement of Facts 2

Reasons for Granting the Writ 3

Prayer for the Writ 4

BRIEF IN SUPPORT OF PETITION 5

Summary of Argument 5

Argument 6

Conclusion 20

TABLE OF CASES CITED

Ahrens v. Clark, 335 U. S. 188, 68 S. Ct. 1443, decided June 21, 1948 7

Banning v. Penrose, 255 F. 154 9

Brown v. U. S., 8 Cranch 110 13

Bridges v. Wixon, 326 U. S. 135, 65 S. Ct. 1443, 89 L. Ed. 2103 16

Commissioner of Internal Revenue v. Swift & Company Employees Ben. Assn., 151 F. 2d 625 15

PAGE

Ex parte Franklon, 253 F. 984 9
Ex parte Gilroy, 257 F. 110 8
Ex parte Graber, 247 F. 882 9
Ex parte Risse, 257 F. 102 8

Grahl v. United States, 261 F. 487 8

Japanese Immigrant Case, 189 U. S. 86 16

Ludecke v. Watkins, 335 U. S. 160, 68 S. Ct. 1429, decided June 21, 1948 7
163 F. 2d 143 17

Market Co. v. Hoffman (1879), 101 U. S. 112, 25 L. Ed. 782 13
Minotto v. Bradley, 252 F. 600 9

United States ex rel. DeCicco v. Longo, 46 F. Supp. 169, 170 8
United States ex rel. Hack v. Clark, 159 F. 2d 552 8
United States ex rel. Harris v. Daniels (1922), 279 F. 844 13
United States ex rel. Kessler v. Watkins, 163 F. 2d 140 8
United States ex rel. Knauer v. Jordan, 158 F. 2d 337 8
United States ex rel. Schleuter v. Watkins, 158 F. 2d 853 9
United States ex rel. Schwarzkopf v. Uhl, 137 F. 2d 898 8
United States ex rel. Von Heymann, 159 F. 2d 650 19
U. S. v. Phelps Dodge Merchantile Co., 157 F. 2d 453 (certiorari denied 330 U. S. 818, 67 S. Ct. 675, 91 L. Ed.) 15

PAGE

Miscellaneous

Alien Enemy Act of 1798

50 U. S. C., 1 Stat. 577, Sections 21-24 ....5, 6, 7, 8, 9, 10, 11, 12, 13, 16, 17, 18

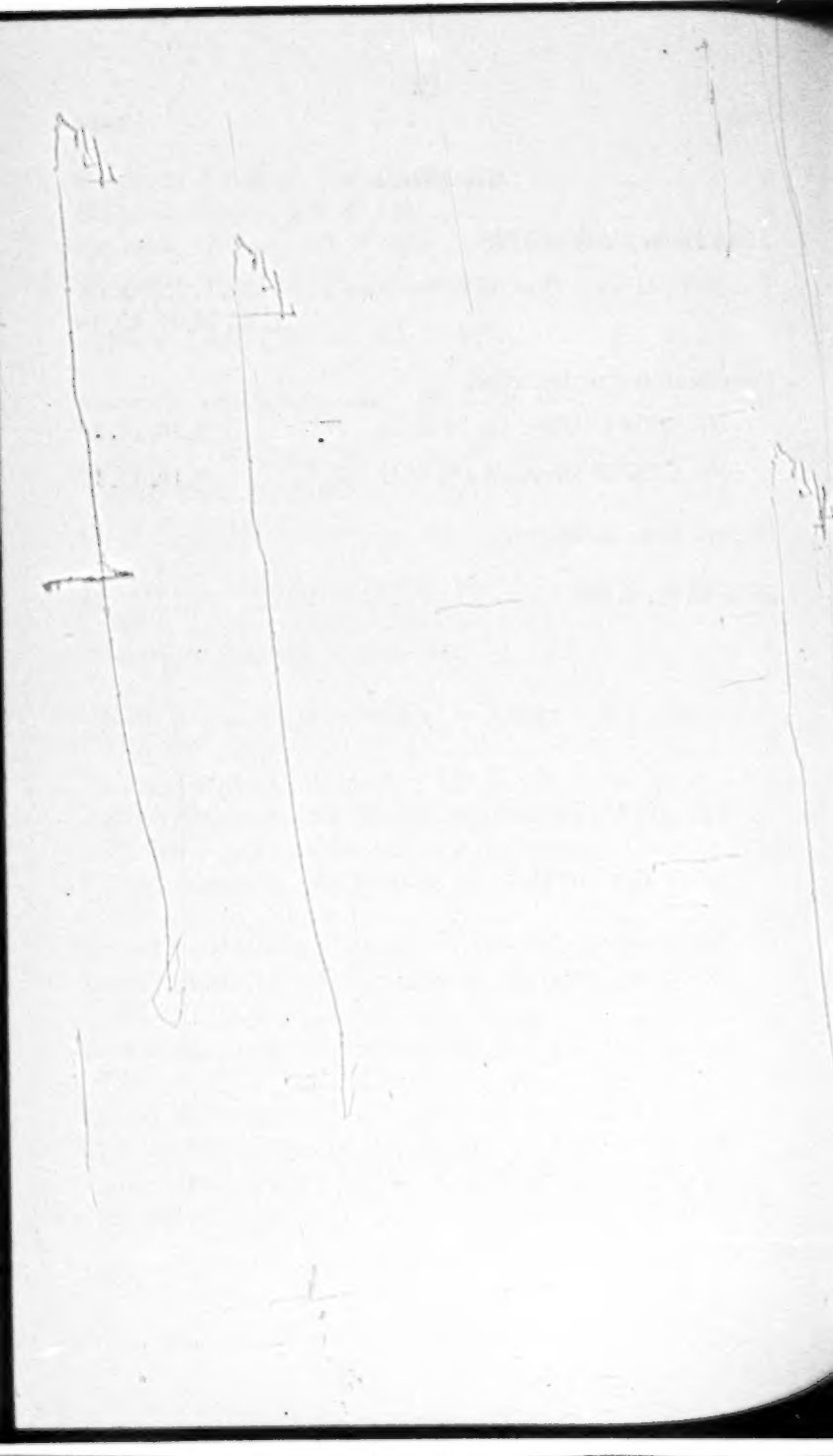
Presidential Proclamation

No. 2655 of July 14, 1945 .....7, 9, 10, 11, 12

No. 2526 of December 8, 1941 .....9, 10, 11, 12

50 Am. Jur., p. 244 14

25 R. C. L., p. 996 14



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Petitioners,

—v.—

W. FRANK WATKINS, as District Director of Immigration and Naturalization of the United States for the District of New York, etc.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To: The Honorable Fred M. Vinson, Chief Justice of the Supreme Court of the United States and Associate Justices of the Supreme Court of the United States.

The petitioners, Anna Dorfler, George Dorfler, Christian Ehmann, Johannes Carl Fitting, Adolf Goelzer, Otto Grimm, Hans Werner Hauswald, Johannes T. Juhl, Peter Schau and Agnes Stephan respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit, No. 21190, in which case petitioners are appellants and respondent is appellee, and in which case the Court announced its decision under date of December 23, 1948, affirming the order and decision of the United States District Court for the

Southern District of New York dismissing petition for writ of habeas corpus.

Opinion Below

The opinion of the United States District Court is set forth (R 20) as is the opinion of the Court of Appeals for the Second Circuit (R 27).

Jurisdiction

The jurisdiction of this Court is invoked under 28 U. S. C. §1254 and §2101 (c).

Questions Presented

1. Do the Proclamations of the President of the United States and the Regulations promulgated pursuant to the Alien Enemy Act authorize internment and removal of alien enemies under Section 21 of said Act?

2. Does due process require that alien enemies be afforded judicial hearings prior to deportation and removal?

3. Are alien enemies entitled to judicial hearings before deportation after the cessation of hostilities?

4. Does the interference by the United States with petitioners' right of voluntary departure preclude their deportation thereafter?

Statement of Facts

Petition for writ of habeas corpus was filed on behalf of petitioners to secure their liberty from the restraint and

detention by the respondent as District Director of Immigration and Naturalization of the United States for the District of New York and as custodian for an agent of the Attorney General of the United States. Each of the relators is of German origin over the age of fourteen (14) and each relator has been ordered removed and deported from the United States as an alien enemy pursuant to provisions of Title 50 United States Code, Section 21, and Presidential Proclamation No. 2655, dated July 14, 1945. Respondent's return to the petition for writ of habeas corpus sets forth no other authority for petitioners' restraint and threatened removal and deportation. None of the petitioners was ever accorded a hearing before any Court of the United States prior to his or her internment, or prior to the issuance of the removal orders against petitioners by the Attorney General.

The United States District Court dismissed the writ and the United States Court of Appeals for the Second Circuit affirmed this order.

Reasons for Granting the Writ

1. The Alien Enemy Act of 1798, 1 Stat. 577, 50 U. S. C. §§21-24, R. S. 4067-70, April 16, 1918, Ch. 55, 40 Stat. 531, delegates to the President of the United States certain powers to direct the conduct of, and to prescribe regulations controlling, alien enemies in time of war. The President, by Proclamation No. 2526 (December 8, 1941) 55 Stat. Part 2, 1705, provided for the restraint and removal of alien enemies in the manner prescribed by sections 23 and 24 of said Act. By Proclamation No. 2655 (July 14, 1945) 59 Stat. Part 2, 870, the President provided for the removal of all alien enemies interned pursuant to the former Proclamation who were deemed dangerous to the public peace and safety of the United States by the Attorney General. The

petitioners were not interned pursuant to Sections 23 and 24 of said Act and, therefore, are not liable to removal under the authority claimed by the respondent. The authority under Sec. 21, claimed by the respondent, has never been put into effect and never became operative.

2. Due process of law and provisions of Sec. 23 of Alien Enemy Act require that judicial hearings be afforded alien enemies prior to their deportation and removal.

3. The cessation of hostilities precludes removal of alien enemies without judicial hearings.

4. The interference with the petitioners' rights of voluntary departure by the United States precludes any involuntary removal thereafter.

Prayer for the Writ

WHEREFORE, your petitioners pray for a writ of certiorari to be issued under the seal of this Court directed to the United States Court of Appeals for the Second Circuit, commanding that Court to certify and send to this Court a complete transcript of the record and all proceedings in the instant cause, so that this cause may be reviewed and determined by this Court, and that the judgment of the United States Court of Appeals for the Second Circuit may be reversed, and that petitioners may be granted such other and further relief as may seem proper.

JOSEPH W. SOLOMON,
Barlum Tower,
Detroit, Michigan,
Counsel for Petitioners.

IN THE

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No.....

UNITED STATES OF AMERICA, *ex rel.*, ANNA DORFLER, *et al.*,

Petitioners,

—v.—

W. FRANK WATKINS, etc.,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

Summary of Argument

1. Certiorari should issue to examine the Presidential Proclamations promulgated pursuant to the Alien Enemy Act (50 U. S. C. 21-24) to determine the rights of petitioners as legally resident aliens in the United States.

2. Certiorari should issue to correct the judgment of the United States Court of Appeals for the Second Circuit which affirmed the order of the United States District Court for the Southern District of New York dismissing the writ of habeas corpus filed on behalf of petitioners.

3. Certiorari should issue to determine the powers of the Attorney General of the United States under Presidential Proclamations governing alien enemies and the Regulations contained therein.

4. Certiorari should issue to prevent the illegal deportation and removal of petitioners who are legal residents of the United States.

5. Certiorari should issue to prevent the threatened and imminent deportation and removal of petitioners by the Attorney General under assumed powers never legally delegated to him.

6. Certiorari should issue to prevent deportation and removal of petitioners until after they have been accorded judicial hearings as required by 50 U. S. C. §23.

7. Certiorari should issue to prevent deportation and removal of petitioners after the cessation of actual hostilities of the recent war.

8. Certiorari should issue to prevent deportation and removal of petitioners because of the interference with, and the imposition of restrictions upon, their right of voluntary departure secured to them by the Alien Enemy Act.

ARGUMENT

The Alien Enemy Act of 1798, 1 Stat. 577, 50 U. S. C. §§21-24 delegates (Sec. 21) certain powers to the President of the United States "whenever there is a declared war between the United States and any foreign nation * * * and the President makes public proclamation of the event", provides (Sec. 22) for the allowance of time to settle affairs and to depart from the United States for aliens who become liable under provisions of Sec. 21, provides (Sec. 23) for the restraint and removal of aliens after full examinations and hearings upon complaints in courts of the United States and sets forth (Sec. 24) the duties of the United

States Marshal in connection with the removal of aliens after proceedings are had under Sections 21 and 23.

The return to the writ of habeas corpus filed in this cause cites removal orders of the Attorney General issued under Sec. 21 of the Alien Enemy Act pursuant to Presidential Proclamation No. 2655 of July 14, 1945, as the sole authority of the respondent for the detention and threatened deportation of petitioners. No other authority is claimed by the respondent.

The cases which have considered the validity of the Alien Enemy Act have been examined and none considered the question of the interpretation of the Proclamations herein raised.

This Court considered the alien enemy question in two cases, *Ahrens* v. *Clark*, 335 U. S. 188, 68 S. Ct. 1443, and *Ludecke* v. *Watkins*, 335 U. S. 160, 68 S. Ct. 1429, both decided on June 21, 1948. Since the former case was disposed of on jurisdictional grounds, the *Ludecke* case is the only one which considered the Act involved herein.

It must be specifically pointed out at this point that the questions raised in this petition were not raised or considered in the *Ludecke* case, *supra*. This Court noted in footnote 4 of the majority opinion:

> "No question has been raised as to the validity of these administrative actions taken pursuant to Presidential Proclamation 2526, dated December 8, 1941, 6 Fed. Reg. 6323, issued under the authority of the Alien Enemy Act."

In the instant case, however, the questions of the regularity, validity, meaning and interpretation of the administrative actions are being raised and challenged. In fact, petitioners allege that no court has considered the ques-

tions being raised in this case. The *Ludecke* case, *supra*, cannot, therefore, be considered binding on this case or determinative of the rights of these petitioners.

The *Ludecke* decision cites, in footnote 8 of the majority opinion, many cases that have considered the Alien Enemy Act.

Only a few cases actually have considered or discussed the validity of the Alien Enemy Act. None of these has inquired into the function, meaning, interpretation, legality, appropriateness, or validity of the Presidential Proclamations under said Act.

Many of the cases often cited as authority for the validity of the Alien Enemy Act have considered this Act only inferentially and none has examined the wording of the Proclamations to ascertain the legal limits to the powers of the Attorney General which are questioned by the petitioners herein.

Grahl v. *United States*, 261 F. 487;
Ex parte Gilroy, 257 F. 110;
Ex parte Risse, 257 F. 102;
United States ex rel. Knauer v. *Jordan*, 158 F. 2d 337;
United States ex rel. DeCicco v. *Longo*, 46 F. Supp. 169, 170;
United States ex rel. Schwarzkopf v. *Uhl*, 137 F. 2d 898;
United States ex rel. Kessler v. *Watkins*, 163 F. 2d 140;
United States ex rel. Hack v. *Clark*, 159 F. 2d 552.

Some cases have held that the Alien Enemy Act provides two methods by which the President may control, intern

and remove alien enemies by Executive action under Sec. 21 and by judicial action under Sec. 23.

Ex parte Graber, 247 F. 882;
Minotto v. *Bradley*, 252 F. 600;
United States ex rel. Schleuter v. *Watkins*, 158 F. 2d 853;
Ex parte Franklon, 253 F. 984.

Some cases have said that no question was raised as to the meaning or regularity of the Presidential Proclamations under the Alien Enemy Act.

In *Banning* v. *Penrose*, 255 F. 154, the Court said:

> "It is conceded at the outset that the acts above referred to are constitutional acts, and *that the proclamation of the President was properly issued in pursuance thereof*. No question is made as to the right to do this, if it was directed toward an alien enemy." (Emphasis supplied.)

Assuming, for the sake of argument, then, that the Alien Enemy Act is valid and constitutional, as a proper delegation to the Executive of certain powers inherent in every sovereign state and necessary to the successful waging of war, the Proclamations of the President (Proclamation No. 2526 of December 8, 1941, and Proclamation No. 2655 of July 14, 1945) fail to authorize the Government's program under the Alien Enemy Act and fail to sustain the respondent's position in this cause. Whatever authority was delegated to the President by the Congress this authority was bound to be exercised only in accordance with the terms of such authority. The question herein involved is not what authority the Executive *may have had* under the statute,

but what authority he *used* thereunder. The respondent sets forth as his authority for the restraint and imminent deportation of the petitioners Sec. 21 of the Alien Enemy Act, and Presidential Proclamation No. 2655 of July 14, 1945.

Presidential Proclamation No. 2655 of July 14, 1945, after setting forth in full the provisions of Sec. 21 of the Alien Enemy Act (50 U. S. C., Sec. 4067 of the Revised Statutes of the United States) and after reciting the existence of the additional sections of the Act (Secs. 22. 23 and 24) and the fact that a state of war exists by reason of joint resolutions of the Congress approved by the President, proclaims "the following regulations, additional and supplemental to those prescribed by the aforesaid proclamations":

> "All alien enemies *now or hereafter interned* within the continental limits of the United States *pursuant to the aforesaid proclamations of the President* of the United States who shall be deemed by the Attorney General to be dangerous to the public peace and safety of the United States * * * shall be subject upon the order of the Attorney General to removal from the United States and may be required to depart therefrom in accordance with such regulations as he may prescribe." (Emphasis supplied.)

It is submitted, therefore, that this Proclamation, relied on by the respondent for his authority, can apply only to those aliens *properly* and *regularly* interned *pursuant to the aforesaid proclamations* of the President. The only Proclamation affecting German nationals and, therefore, these petitioners, is Proclamation 2526 of December 8, 1941. It is to this Proclamation to which Proclamation No. 2655

refers, as far as these petitioners are concerned. *No one, not legally interned pursuant to Proclamation No. 2526, may be deported or removed from the United States pursuant to Proclamation No. 2655.*

Proclamation No. 2526, under the title "Authority" sets forth Sec. 21 of Title 50 of the United States Code (the Alien Enemy Act) and refers to Sections 22, 23 and 24 of the same Title.

Under the heading "Proclamation", the President made public proclamation that an invasion or predatory incursion was threatened upon the territory of the United States. Under the heading of "Conduct to be Observed by Alien Enemies", the President then admonished all alien enemies to "preserve the peace" and to "refrain from crime", etc. The Proclamation then continues:

> "All alien enemies shall be liable to restraint, or to give security, or to remove and depart from the United States *in the manner prescribed by Sections 23 and 24 of title 50* of the United States Code, and as prescribed in the regulations duly promulgated by the President." (Emphasis supplied.)

Thereafter the President provided for the duties and authority of the Attorney General and the Secretary of War (not herein involved). The Proclamation then continues:

> "Each of them (the Attorney General and the Secretary of State) is specifically directed to cause the apprehension of such alien enemies as in the judgment of each are subject to apprehension or deportation under such regulations."

Proclamation No. 2526 incorporates the Regulations appended to Presidential Proclamation No. 2525, 55 Stat.

Part 2, 1700, governing the control, etc., of Japanese aliens. Section 7 of these Regulations provide:

> "Alien enemies deemed dangerous to the public peace and safety of the United States by the Attorney General are subject to summary apprehension."

The outline of the duties and authority of the Attorney General is a general authorization under the terms of the Proclamation. The regulations provide for action *under the Proclamation.* There is no ambiguity or inconsistency when all parts of the Proclamations are read together. Proclamation No. 2526 sets forth in clear, unambiguous and exact language that "the alien shall be liable to restraint, or to give security, or to remove and depart from the United States *in the manner prescribed by* Sections 23 and 24 * * * *".*

Proclamation No. 2655 is likewise clear and specific in that it provides for the removal upon order of the Attorney General for those alien enemies deemed by him to be dangerous *who had* or *thereafter were interned pursuant* to the aforesaid Proclamation (No. 2526).

The most that can be claimed by respondent for the Presidential Proclamations issued under the Alien Enemy Act is that they seem to contain inconsistencies. These inconsistencies are illusory and not real. The respondent herein and the other agents of or custodians for the Attorney General in similar cases have relied on Sec. 21 of the Act and Presidential Proclamation No. 2655, dated July 14, 1945, as authority for the internment and threatened deportation of petitioners and other persons similarly situated, *knowing that the President never authorized internment or removal under Sec. 21.*

The mere recital of the existence of Sec. 21 in the Proclamation does not enact the same. Sec. 21, by its terms, is not "self-enacting", nor does the mere existence of a state of war make it self-enacting. *Brown* v. *U. S.*, 8 Cranch 110. The President, under provisions of the Alien Enemy Act, is authorized to direct the conduct to be observed on the part of alien enemies, the manner and degree of their restraint and to provide for the removal of those who are not to be permitted to remain in the United States. This he has done by authorizing certain action under Sections 23 and 24 of the Act. This direction was specific and exact and is not to be enlarged or confused by general terms which are consistent with the specific designation of Sections 23 and 24.

This Court in *United States ex rel. Harris* v. *Daniels* (1922), 279 F. 844, said,

> "We do not think that this apparent conflict is one in reality. It is a cardinal rule of construction that effect is to be given, if possible, to every word, clause, and sentence of the statute. * * * It is the duty of the court so far as practical to reconcile the different provisions, so as to make them consistent and harmonious, and to give a sensible and intelligent effect to each." Citing numerous authorities and *North American Creamery Co.* v. *Willcuts*, 38 F. 2d 483 and *Pillsbury Flour Mills Co.* v. *Great Northern Railway Co.*, 25 F. 2d 66.

And in *Market Co.* v. *Hoffman* (1879), 101 U. S. 112, 25 L. Ed. 782, the Court said:

> "We are not at liberty to construe any statute so as to deny effect to any part of its language. It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word. As

early as in Baron's Abridgment, Sec. 2, it is said that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void or insignificant. Another rule equally recognized is that every part of a statute must be construed in connection with the whole, so as to make all the parts harmonize, if possible, and give meaning to each."

The general rule of construction is that the specific words in a statute will govern an general phraseology that follows the specific words or designation.

This rule is set forth in 50 Am. Jur. p. 244 as follows:

"* * * where, in a statute, general words follow a designation of particular subjects or persons, the meaning of the general will ordinarily be presumed to be, and construed as, restricted by the particular designation * * *"

And in 25 R. C. L. p. 996:

"* * * in accordance with what is commonly known as the rule of ejusdem generis, where, in a statute, general words follows a designation of particular subjects or classes of persons, the meaning of the general words will ordinarily be presumed to be restricted by the particular designation * * *"

There seem to be no special rules governing the construction of Presidential Proclamations and, it is submitted, these are to be governed by the usual rules of statutory construction.

Though the courts will sometimes give consideration to the interpretations of statutes made by the Executive and the Executive Departments of the government, where these interpretations are obviously erroneous or incorrect, they will not be followed by the courts.

The Court in *Commissioner of Internal Revenue* v. *Swift & Company Employees Ben. Assn.*, 151 F. 2d 625, said:

> "That courts should give weight to the consistent interpretation of a regulation by an administrative agency is not open to question. We do not think, however, that such recognition closes the door to a judicial determination of the invalidity of a regulation which is so clearly in conflict with a statutory provision, as is shown in the instant case."

And in *U. S.* v. *Phelps Dodge Merchantile Co.*, 157 F. 2d 453 (certiorari denied 330 U. S. 818, 67 S. Ct. 675, 91 L. Ed.) the Court said:

> "Appellants contend that administrative officers charged with the duty of enforcing Sec. 304 (a) of the Federal Food, Drug, and Cosmetic Act, 21 U. S. C. A. Sec. 334 (a) have interpreted it as providing for condemnation of any article * * *. Being clearly erroneous, that interpretation need not and should not be followed by the Court."

The mere fact that the petitioners have been interned for many years does not make such internment legal. The legality of such internment and the threatened removal and deportation has been challenged these many years. The petitioners and others similarly situated have insisted that they were entitled to hearings in accordance with due

process of law. Under removal orders issued pursuant to Sec. 23 of the Act, they would be so entitled.

Therefore, it cannot be claimed that this Court should follow the Attorney General's interpretation of the Act or the Proclamations.

The petitioners are all legal residents of the United States and are threatened with deportation without the protection of any judicial inquiry prior to such deportation. In deportation proceedings, due process requires a fair hearing. *Bridges* v. *Wixon,* 326 U. S. 135, 65 S. Ct. 1443, 89 L. Ed. 2103. This is true in cases in which the statute prescribes no procedure for a hearing. The *Japanese Immigrant Case,* 189 U. S. 86.

It was said in the *Bridges* case, *supra*:

> "Here the liberty of an individual is at stake. * * * We are dealing here with procedural requirements prescribed for the protection of the alien. Though deportation is not technically a criminal proceeding, it visits a great hardship on the individual and deprives him of the right to stay and live and work in this land of freedom. That deportation is a penalty—at times a most serious one—cannot be doubted. Meticulous care must be exercised less the procedure by which he is deprived of that liberty does not meet the essential standards of fairness."

Mr. Justice Murphy, in his concurring opinion in the same case, said:

> "But once an alien lawfully enters and resides in this country, he becomes invested with the rights guaranteed by the Constitution to all people within our borders."

After World War I interned alien enemies were deported, but Congress first made certain they were given hearings prior to their deportation.

Entirely aside of what may have been sufficient reason and justification for internment of alien enemies during the "war", *the actual "war" as it was waged and fought,* the actual period of hostilities during which alien enemies "might" have been a danger or threat to this Country, during the period of time when, if the Alien Enemy Act means anything, was meant to be covered, now that this period is over, there seems no reason *at this time* why deportation of persons, legal residents of the United States, should be permitted without a full and fair hearing before such deportation. As the Court of Appeals (Second Circuit) said in the *Ludecke* case (163 F. 2d 143), "However, on the face of the record, it is hard to see why the relator should now be compelled to go back". It is indeed hard to see why any of the petitioners should now be deported until after a full and fair hearing on the merits of their cases. Whatever might have been the exigencies of the time of their original internment, these conditions no longer obtain. As Mr. Justice Black said in his dissenting opinion in the *Ludecke* case, "To hold that we are still at war with Germany in the sense contemplated by the statute is, a "pure fiction." Waiving, for the moment, the legality and propriety of the original order of internment made in the light of then existing conditions of war, certainly no "invasion" is threatened now. Certainly the power to remove alien enemies under the Act must be governed by the conditions existing at the time of such threatened removal. Since the entire Act is predicated upon conditions which have ceased to exist, no future enforcement to the Proclamations should be given except within the strictest limits of constitutional protections. This Court is not being asked "to terminate

the state of war". This Court is being asked to refuse to enforce an Act and a Proclamation no longer applicable, no longer needed, no longer legal, justifiable or equitable. No extensive citation of authority need be made to establish the power of the Court to declare an act unconstitutional, if it is so. Likewise, no extensive citation of authority need be made to establish the power of the Court to refuse to enforce an Act or Proclamation which, by its very terms, has ceased to apply. This Court is being called upon to interpret the statute, is asked to carry out the purpose of Congress in connection with the particular right the statute sought to protect. The statute was enacted to give the Executive, whose responsibility it is successfully to wage and direct the war as Commander-in-Chief, the power to protect the United States and its citizens from persons who, because of allegiance, citizenship or origin in an enemy country "might" be dangerous. There is no longer any war for the Executive to wage. The country of which the relators are or were citizens has surrendered. The war is over. The statute, therefore, is no longer needed and becomes inapplicable and inoperative. This Court is being asked by the respondent to enforce the Act and the Proclamations made thereunder long after the need for any of them exists. This Court is being asked to put its stamp of approval on the deportation of petitioners at a time when such deportation is no longer an integral part of any "war" program, even though the only authority for such deportation or removal is a "war" Act. The Court is being asked to permit the deportation of the relators without any judicial hearings whatsoever, without the guarantees of due process to which relators, as lawful residents of the United States, are entitled.

Under the provisions of the Alien Enemy Act, no alien enemy may be deported or removed until after he has re-

fused or neglected to depart from the United States. It is admitted by the respondent that the power to remove aliens cannot be exercised until and unless the alien is *first* ordered to leave the United States "voluntarily" and fails, refuses or neglects so to do. The Government cannot charge an alien with having neglected or refused to leave voluntarily if and when it has prevented his voluntary departure.

This rule was recognized and applied by the Court of Appeals (Second Circuit) in *United States ex rel. Von Heymann*, 159 F. 2d. 650.

The Attorney General and/or the Secretary of State have furnished "black-lists" of aliens to foreign countries concerning many persons including petitioners. The circulation of these lists is admitted by the respondent. Many of the petitioners have been unable to arrange for their departure because of these "black-lists." It is no answer to these petitioners that some others similarly situated have departed voluntarily. This interference with petitioners' rights of voluntary departure by the Government must preclude any right of removal.

For a long period of time prior to April 7, 1947, the right of voluntary departure of the petitioners and others similarly situated was refused and denied by the Government. It has, on occasion, been claimed by the Government that no such refusal or denial was made and that the petitioners could have departed from the United States to any country of their choosing without permission of the Attorney General. Notwithstanding such claim, on April 7, 1947, each of the petitioners was served with a copy of a notice by the Government that permission was not required if the petitioners wished to leave voluntarily to a country of their choosing. Certainly it is not to be assumed that the Attorney General or his agents did a meaningless thing. It is not to be assumed that they gave a notice where no notice was necessary. Some of the petitioners may have been able to

effect their voluntary departure prior to the receipt of this notice and unable to do so since that time. The prior refusal by the Attorney General and his agents in charge of the alien enemy program indicate the manner in which the program has been enforced. The Attorney General has adopted his own interpretation and his own assumption of powers not founded on the Proclamations of the President. The petitioners have been treated as persons "without rights". While this might be excusable during a time of hostilities when the rights of an individual alien may well be sacrificed to the general good of the Country, an alien's rights should now be upheld as should those of any other person under the protection of the Constitution.

CONCLUSION

It has always been a cardinal principle of law in the United States that no one be stripped of his rights, whether personal or property, without a hearing on the same. Since no harm can come to the Country by affording to petitioners hearings as designated by the Alien Enemy Act, it is urged and most respectfully submitted that the writ of certiorari should issue.

JOSEPH W. SOLOMON,
Barlum Tower,
Detroit, Michigan,
Counsel for Petitioners.

INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statute, proclamation, and regulations involved	3
Statement	3
Argument	5
Conclusion	10
Appendix A	11
Appendix B	14
Appendix C	24

CITATIONS

Cases:	
Klapprott v. *United States*, 335 U. S. 601	2
Ludecke v. *Watkins*, 335 U. S. 160	5, 6
United States ex rel. Ackermann v. *O'Rourke*, 164 F. 2d 95, certiorari denied, 334 U. S. 858	8
United States, ex rel. Von Heymann v. *Watkins*, 159 F. 2d 650	9
Statute:	
Alien Enemy Act of 1798, R. S. 4067–4070, as amended, 40 Stat. 531, 50 U. S. C. 21–24:	
Sec. 21	5, 6, 11
Sec. 22	12
Sec. 23	6, 12
Sec. 24	6, 13
Miscellaneous:	
Presidential Proclamation 2525, 6 Fed. Reg. 6321	7, 8, 14
Presidential Proclamation 2526, 6 Fed. Reg. 6323	6, 7, 8, 17
Presidential Proclamation 2655, 10 Fed. Reg. 8947	4, 6, 7, 21
Regulations of the Attorney General, 10 Fed. Reg. 12189	8, 24
Resolution VII of the Inter-American Conference on the Problems of War and Peace adopted at Mexico City on March 8, 1945, Department of State Publication 2497, Conference Series 85, pp. 71–72	4, 9

836040—49——1

In the Supreme Court of the United States

OCTOBER TERM 1948

No. 655

UNITED STATES OF AMERICA, EX REL. ANNA DORFLER, GEORGE DORFLER, CHRISTIAN EHMANN, JOHANNES CARL FITTING, ADOLF GOELZER, OTTO GRIMM, HANS WERNER HAUSWALD, JOHANNES T. JUHL, PETER SCHAU, AND AGNES STEPHAN, PETITIONERS

v.

W. FRANK WATKINS, AS DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION OF THE UNITED STATES FOR THE DISTRICT OF NEW YORK, ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court for the Southern District of New York (R. 20–22) is not reported. The opinion of the Court of Appeals for the Second Circuit (R. 27–29) is reported at 171 F. 2d 431.

JURISDICTION

The judgment of the Court of Appeals for the Second Circuit was entered on December 23, 1948 (R. 30). The petition for a writ of certiorari was filed on March 19, 1949. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether the Presidential Proclamations issued under the Alien Enemy Act authorize internment and removal of alien enemies under Section 21 of that Act.[1]

2. Whether the Alien Enemy Act is unconstitutional because it precludes judicial review of removal orders, issued by the Attorney General pursuant to the Act and Presidential Proclamation 2655, against petitioners, admitted alien enemies.[2]

3. Whether the power so to remove petitioners has lapsed because of the cessation of hostilities between the United States and Germany.

4. Whether the State Department's notification to various South American nations of the im-

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[1] For convenience, the sections of the Alien Enemy Act will be numbered throughout this brief as they are in Title 50 of the United States Code.

[2] For the purposes of this petition, no question is raised as to whether petitioners are alien enemies. Three petitioners, however, were at one time naturalized citizens of the United States whose certificates of naturalization were cancelled by judgments rendered on default. The opinion below saves to those petitioners any rights accruing to them under this Court's decision in *Klapprott* v. *United States*, 335 U. S. 601.

pending removal of approximately four hundred German alien enemies, including petitioners, who might be *persona non grata* to those nations, constitutes such an interference with petitioners' privilege of voluntary departure as to prevent the exercise of the power of compulsory removal.

STATUTE, PROCLAMATION, AND REGULATIONS INVOLVED

The provisions of the Alien Enemy Act of 1798, R. S. 4067–4070, as amended, 40 Stat. 531, 50 U. S. C. 21–24, are set out in Appendix A, *infra*, pp. 11–13. The text of Presidential Proclamations 2525 (6 Fed. Reg. 6321), 2526 (6 Fed. Reg. 6323), 2655 (10 Fed. Reg. 8947) and of the Attorney General's regulations issued pursuant to the latter Proclamation are set forth in Appendices B and C, respectively, *infra*, pp. 14–26.

STATEMENT

Petitioners are German alien enemies as to whom orders of removal have been issued by the Attorney General under Presidential Proclamation 2655, promulgated on July 14, 1945, pursuant to the Alien Enemy Act of 1798. The petition for a writ of habeas corpus (R. 3–14) which instituted this proceeding was filed in the District Court for the Southern District of New York on September 20, 1948, and a writ of habeas corpus was issued the same day (R. 2). Petitioners alleged that

their threatened removal and repatriation was unlawful and without authority in that Presidential Proclamation 2655 provides for removal of alien enemies only under Sections 23 and 24 of the Alien Enemy Act, after judicial hearings (R. 7). Petitioners also alleged that their right to depart voluntarily from the United States has been interfered with, and challenged the power of the Attorney General to remove them until the cessation of such interference (R. 6). The return to the writ, filed on October 19, 1948, in behalf of respondent, District Director of the Immigration and Naturalization Service for the District of New York, showed that each petitioner was granted a parole of thirty days to arrange for voluntary departure from the United States, but that each neglected to effectuate such departure and has continued in such neglect and refusal voluntarily to depart (R. 15–18). Respondent admitted, however, that, pursuant to Resolution VII of the Inter-American Conference on the Problems of War and Peace adopted at Mexico City on March 8, 1945,[3] the State Department of the United States, prior to the service of the removal orders, informed various South American nations of the impending removal of approximately four hundred German alien enemies, including petitioners, and requested the govern-

[3] See Department of State Publication 2497, Conference Series 85, pp. 71–72.

ments of those nations not to issue visas to those aliens.

No hearing was held before the District Court at the suggestion of counsel, since there were no disputed questions of fact (R. 21). By opinion dated October 18, 1948, the district judge dismissed the writ as unfounded (R. 20–22). Upon appeal, the court below affirmed the dismissal (R. 27–30).

ARGUMENT

Petitioners present four contentions: (1) The Presidential Proclamations under which the Attorney General purported to act in ordering the removal of petitioners as alien enemies pursuant to 50 U. S. C. 21 (*infra*, pp. 11–12) do not in fact authorize internment or removal under 50 U. S. C. 21; (2) due process of law requires hearings of a judicial nature, which were not had; (3) the Alien Enemy Act and the Proclamations thereunder should not be enforced after the termination of hostilities; (4) an alien enemy must be given a reasonable time to depart voluntarily without Government interference through communications to foreign nations that he is deemed a dangerous alien enemy. Points (2) and (3) of petitioners' contentions have already been squarely decided adversely to them by this Court in *Ludecke* v. *Watkins*, 335 U. S. 160. We submit that petitioners' remaining objections are plainly without merit and do not warrant further review.

1. That the Presidential Proclamations in question are sufficient to authorize internment or removal under Section 21 of the Alien Enemy Act is certainly implicit in the decision of this Court in *Ludecke* v. *Watkins, supra,*[4] sustaining the validity of removal orders made by the Attorney General.[5] Obviously, the constitutional question of whether judicial review of the removal orders was required would never have been reached unless this Court had first concluded that such orders were issued pursuant to valid authority delegated by the Presidential Proclamations. But if the question be examined *de novo,* the contention of petitioners that Proclamation 2655 (*infra,* pp. 21–23), under which the Attorney General has purported to act, authorizes restraint and removal only in the manner prescribed by Sections 23 and 24 of the Alien Enemy Act (*infra,* pp. 12–13) is, we believe, baseless and frivolous. The argument

[4] See also cases there cited, 335 U. S. at 165, note 8.

[5] Petitioners suggest that this question was not raised or considered in the *Ludecke* case and point to note 4 of the opinion of the Court which states that "No question has been raised as to the validity of these administrative actions [internment] taken pursuant to Presidential Proclamation 2526, dated December 7, 1941, 6 Fed. Reg. 6323, issued under the authority of the Alien Enemy Act." As we read the opinion, it would appear that the Court was merely noting that the question of the constitutionality of such procedure during actual hostilities was not in issue. In so noting, we think it significant that the Court recognized that the administrative actions were taken "pursuant" to Presidential Proclamation 2526.

is that Proclamation 2655 authorized only the removal of aliens who have been legally interned pursuant to Proclamation 2526 (*infra*, pp. 19–21);[6] and that the latter provides only that "alien enemies shall be liable to restraint, or to give security, or to remove and depart from the United States *in the manner prescribed by Sections 23 and 24 of title 50* of the United States Code, and as prescribed in the regulations duly promulgated by the President." [Italics supplied by petitioners, Pet. p. 11.] Petitioners thus deliberately ignore the concluding phrase, "and as prescribed in the regulations duly promulgated by the President." These words unquestionably, on their face, as the court below held, "invoke the power of executive removal without resort to sections 23 and 24" (R. 28). Any other construction is plainly precluded by the Proclamation itself (2526) which, after the foregoing language, goes on to incorporate and make applicable to German aliens the regulations contained in Proclamation 2525 (*infra*,

[6] Proclamation 2655 provides in part that "All alien enemies now or hereafter interned within the continental limits of the United States pursuant to the aforesaid proclamations of the President of the United States who shall be deemed by the Attorney General to be dangerous to the public peace and safety of the United States because they have adhered to the aforesaid enemy governments or to the principles of government thereof shall be subject upon the order of the Attorney General to removal from the United States and may be required to depart therefrom in accordance with such regulations as he may prescribe."

836040—49——2

pp. 14–17), relative to Japanese aliens.[7] Section 7 of those regulations expressly provides that "alien enemies deemed dangerous to the public peace or safety of the United States by the Attorney General * * * are subject to summary apprehension." The language quoted from Proclamation 2526, upon which petitioners rely, is merely a repetition of identical language in the prior proclamation (2525). It is an amazing theory indeed that the President intended to subject Japanese aliens to summary procedure but to permit German aliens to remain at large until after full judicial hearings. We submit that petitioners were lawfully interned and hence were subject to removal under Proclamation 2655.[8]

2. Pursuant to regulations of the Attorney General (10 Fed. Reg. 12189) (*infra*, pp. 24–26), prescribed under Presidential Proclamation 2655, each petitioner was released on parole for thirty days for the purpose of attending to his, or her, personal affairs and arranging for voluntary departure. None of the petitioners did effect a voluntary departure and each has continued in such neglect and refusal to leave the United States

[7] Under the caption "Regulations," Proclamation 2526 provides that "The regulations contained in Proclamation No. 2525 of December 7, 1941, relative to natives, citizens, denizens or subjects of Japan are hereby incorporated in and made a part of this proclamation, and shall be applicable to alien enemies defined in this proclamation."

[8] Cf. *United States ex rel. Ackermann* v. *O'Rourke*, 164 F. 2d 95 (C. A. 5), certiorari denied, 334 U. S. 858.

voluntarily (R. 15–18). However, because the State Department of the United States, in accordance with Resolution VII of the Inter-American Conference on the Problems of War and Peace adopted at Mexico City on March 8, 1945, has informed various South American nations of the impending removal of approximately four hundred German alien enemies, including petitioners, and requested the governments of those nations not to issue visas to these aliens, petitioners claim that their right of voluntary departure has, as a matter of law, been so interfered with that compulsory removal is precluded until the interference is ended. We see no merit in the contention.

The court below, which was fully aware that an alien must be afforded the statutory privilege of voluntary departure (*United States ex rel. Von Heymann* v. *Watkins,* 159 F. 2d 650 (C. A. 2)), rightly recognized that (R. 29) "The privilege of voluntary departure does not imply that the alien must be able to go to the country of his choice. So long as there is any foreign country to which he could have gone, his failure to go there is a 'neglect' or 'refusal' to depart voluntarily. Hence a communication by the State Department to a foreign country, which that country may or may not heed,[9] cannot be regarded as an unlawful re-

[9] Respondent's return to the writ of habeas corpus sets forth an instance wherein the Brazilian Government issued a visa to an alien enemy, notwithstanding the communication referred to above (R. 19).

straint on the alien's voluntary departure. The relators have had ample time to arrange to leave the United States and have made no showing that it was impossible for them to do so." Certainly, it would be an extremely short-sighted policy that enabled alien enemies "deemed dangerous to the public peace or safety of the United States" to gain admission to neighboring nations whose governments were unaware that such persons might disturb or threaten the individual or collective security and welfare of the American Republics. Common sense dictates that effective measures be taken to prevent subversive elements from regaining any vantage point within the Western Hemisphere. We submit that the privilege of voluntary departure afforded alien enemies by the Alien Enemy Act cannot be so construed as to make removal a meaningless step.

CONCLUSION

The judgment of the court below is correct and there is no conflict of decisions. The petition for a writ of certiorari should, therefore, be denied.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

H. G. MORISON,
Assistant Attorney General.

SAMUEL D. SLADE,
BENJAMIN FORMAN,
Attorneys.

MAY 1949.

APPENDIX A

The Alien Enemy Act of 1798, R. S. 4067–4070, as amended, 50 U. S. C. 21–24, provides:[1]

§ 21. Restraint, regulation, and removal. Whenever there is a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted or threatened against the territory of the United States by any foreign nation or government, and the President makes public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being of the age of fourteen years and upward, who shall be within the United States and not actually naturalized, shall be liable to be apprehended, restrained, secured, and removed as alien enemies. The President is authorized in any such event, by his proclamation thereof, or other public act, to direct the conduct to be observed on the part of the United States, toward the aliens who become so liable; the manner and degree of the restraint to which they shall be subject and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those who, not being permitted to reside within the United States, refuse or neglect to depart therefrom; and to establish any other regulations which are found

[1] The section numbers used are those which appear in Title 50 of the United States Code.

necessary in the premises and for the public safety. (R. S. § 4067; Apr. 16, 1918, ch. 55, 40 Stat. 531.)

§ 22. Time allowed to settle affairs and depart.

When an alien who becomes liable as an enemy, in the manner prescribed in section 21 of this title, is not chargeable with actual hostility, or other crime against the public safety, he shall be allowed, for the recovery, disposal, and removal of his goods and effects, and for his departure, the full time which is or shall be stipulated by any treaty then in force between the United States and the hostile nation or government of which he is a native, citizen, denizen, or subject; and where no such treaty exists, or is in force, the President may ascertain and declare such reasonable time as may be consistent with the public safety, and according to the dictates of humanity and national hospitality (R. S. § 4068).

§ 23. Jurisdiction of United States courts and judges.

After any such proclamation has been made, the several courts of the United States, having criminal jurisdiction, and the several justices and judges of the courts of the United States, are authorized and it shall be their duty, upon complaint against any alien enemy resident and at large within such jurisdiction or district, to the danger of the public peace or safety, and contrary to the tenor or intent of such proclamation, or other regulations which the President may have established, to cause such alien to be duly apprehended and conveyed before such court, judge, or justice; and after a full examination and hearing on such complaint, and sufficient cause appear-

ing, to order such alien to be removed out of the territory of the United States, or to give sureties for his good behavior, or to be otherwise restrained, conformably to the proclamation or regulations established as aforesaid, and to imprison, or otherwise secure such alien, until the order which may be so made shall be performed (R. S. § 4069).

§ 24. Duties of marshals.

When an alien enemy is required by the President, or by order of any court, judge, or justice, to depart and to be removed, it shall be the duty of the marshal of the district in which he shall be apprehended to provide therefor and to execute such order in person, or by his deputy or other discreet person to be employed by him, by causing a removal of such alien out of the territory of the United States; and for such removal the marshal shall have the warrant of the President, or of the court, judge, or justice ordering the same, as the case may be (R. S. § 4070).

APPENDIX B

Proclamation 2525, issued by President Roosevelt on December 7, 1941, provides in part (6 Fed. Reg. 6321):

A PROCLAMATION

Whereas it is provided by Section 21 of Title 50 of the United States Code as follows:

"Whenever there is a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted, or threatened against the territory of the United States by any foreign nation or government, and the President makes public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being of the age of fourteen years and upward, who shall be within the United States and not actually naturalized, shall be liable to be apprehended, restrained, secured, and removed as alien enemies. The President is authorized in any such event, by his proclamation thereof, or other public act, to direct the conduct to be observed, on the part of the United States, toward the aliens who become so liable; the manner and degree of the restraint to which they shall be subject and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those who, not being permitted to reside within the United States, refuse or neglect to depart therefrom; and to establish any other regulations which are found necessary in the premises and for the public safety."

and

Whereas by Sections 22, 23 and 24 of Title 50 of the United States Code further provision is made relative to alien enemies:

Now, therefore, I, Franklin D. Roosevelt, as President of the United States, and as Commander in Chief of the Army and Navy of the United States, do hereby make public proclamation to all whom it may concern that an invasion has been perpetrated upon the territory of the United States by the Empire of Japan.

And, acting under and by virtue of the authority vested in me by the Constitution of the United States and the said sections of the United States Code, I do hereby further proclaim and direct that the conduct to be observed on the part of the United States toward all natives, citizens, denizens or subjects of the Empire of Japan being of the age of fourteen years and upwards who shall be within the United States or within any territories in any way subject to the jurisdiction of the United States and not actually naturalized, who for the purpose of this Proclamation and under such sections of the United States Code are termed alien enemies, shall be as follows:

All alien enemies are enjoined to preserve the peace towards the United States and to refrain from crime against the public safety, and from violating the laws of the United States and of the States and Territories thereof; and to refrain from actual hostility or giving information, aid or comfort to the enemies of the United States or interfering by word or deed with the defense of the United States or the political processes and public opinions thereof; and to comply strictly with the

regulations which are hereby or which may be from time to time promulgated by the President.

All alien enemies shall be liable to restraint, or to give security, or to remove and depart from the United States in the manner prescribed by Sections 23 and 24 of Title 50 of the United States Code, and as prescribed in the regulations duly promulgated by the President.

And, pursuant to the authority vested in me, I hereby charge the Attorney General with the duty of executing all the regulations hereinafter contained regarding the conduct of alien enemies within continental United States, Puerto Rico, the Virgin Islands and Alaska, and the Secretary of War with the duty of executing the regulations which are hereinafter set forth and which may be hereafter adopted regarding the conduct of alien enemies in the Canal Zone, the Hawaiian Islands and the Philippine Islands. Each of them is specifically directed to cause the apprehension of such alien enemies as in the judgment of each are subject to apprehension or deportation under such regulations. In carrying out such regulations within the continental United States, Puerto Rico, the Virgin Islands and Alaska, the Attorney General is authorized to utilize such agents, agencies, officers and departments of the United States and of the several states, territories, dependencies and municipalities thereof and of the District of Columbia as he may select for the purpose. Similarly the Secretary of War in carrying out such regulations in the Canal Zone, the Hawaiian Islands and the Philippine Islands is authorized to use such agents, agencies, officers and departments of the

United States and of the territories, dependencies and municipalities thereof as he may select for the purpose. All such agents, agencies, officers and departments are hereby granted full authority for all acts done by them in the execution of such regulations when acting by direction of the Attorney General or the Secretary of War, as the case may be.

And, pursuant to the authority vested in me, I hereby declare and establish the following regulations which I find necessary in the premises and for the public safety:

* * * * *

(7) Alien enemies deemed dangerous to the public peace or safety of the United States by the Attorney General or the Secretary of War, as the case may be, are subject to summary apprehension. * * *

* * * * *

In witness whereof, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

Done at the City of Washington this 7th day of December, in the year of our Lord nineteen hundred and forty-one, and of the Independence of the United States of America the one hundred and sixty-sixth.

By the President:

[SEAL] FRANKLIN D ROOSEVELT

CORDELL HULL,
Secretary of State.

Proclamation 2526 issued by President Roosevelt on December 8, 1941, provides (6 Fed. Reg. 6323):

A PROCLAMATION

Whereas it is provided by section 21 of title 50 of the United States Code as follows:

"Whenever there is a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted, or threatened against the territory of the United States by any foreign nation or government, and the President makes public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being of the age of fourteen years and upward, who shall be within the United States and not actually naturalized, shall be liable to be apprehended, restrained, secured, and removed as alien enemies. The President is authorized in any such event, by his proclamation thereof, or other public act, to direct the conduct to be observed, on the part of the United States, toward the aliens who become so liable; the manner and degree of the restraint to which they shall be subject and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those who, not being permitted to reside within the United States, refuse or neglect to depart therefrom; and to establish any other regulations which are found necessary in the premises and for the public safety."

And whereas by sections 22, 23 and 24 of title 50 of the United States Code further provision is made relative to alien enemies:

Now, therefore, I, Franklin D. Roosevelt, as President of the United States and as Commander in Chief of the Army and

Navy of the United States, do hereby make public proclamation to all whom it may concern that an invasion or predatory incursion is threatened upon the territory of the United States by Germany.

And, acting under and by virtue of the authority vested in me by the Constitution of the United States and the said sections of the United States Code, I do hereby further proclaim and direct that the conduct to be observed on the part of the United States toward all natives, citizens, denizens or subjects of Germany being of the age of fourteen years and upwards who shall be within the United States or within any territories in any way subject to the jurisdiction of the United States and not actually naturalized, who for the purpose of this Proclamation and under such sections of the United States Code are termed alien enemies, shall be as follows:

All alien enemies are enjoined to preserve the peace towards the United States and to refrain from crime against the public safety, and from violating the laws of the United States and of the States and Territories thereof; and to refrain from actual hostility or giving information, aid or comfort to the enemies of the United States or interfering by word or deed with the defense of the United States or the political processes and public opinions thereof; and to comply strictly with the regulations which are hereby or which may be from time to time promulgated by the President.

All alien enemies shall be liable to restraint, or to give security, or to remove and depart from the United States in the manner prescribed by sections 23 and 24 of title 50 of the United States Code, and as

prescribed in the regulations duly promulgated by the President.

And, pursuant to the authority vested in me, I hereby charge the Attorney General with the duty of executing all the regulations hereinafter prescribed regarding the conduct of alien enemies within continental United States, Puerto Rico, the Virgin Islands and Alaska, and the Secretary of War with the duty of executing the regulations which are hereinafter prescribed and which may be hereafter adopted regarding the conduct of alien enemies in the Canal Zone, the Hawaiian Islands and the Philippine Islands. Each of them is specifically directed to cause the apprehension of such alien enemies as in the judgment of each are subject to apprehension or deportation under such regulations. In carrying out such regulations within the continental United States, Puerto Rico, the Virgin Islands and Alaska, the Attorney General is authorized to utilize such agents, agencies, officers and departments of the United States and of the several states, territories, dependencies and municipalities thereof and of the District of Columbia as he may select for the purpose. Similarly the Secretary of War in carrying out such regulations in the Canal Zone, the Hawaiian Islands and the Philippine Islands is authorized to use such agents, agencies, officers and departments of the United States and of the territories, dependencies and municipalities thereof as he may select for the purpose. All such agents, agencies, officers and departments are hereby granted full authority for all acts done by them in the execution of such regulations when acting by direction of the Attorney General or the Secretary of War, as the case may be.

The regulations contained in Proclamation No. 2525 of December 7, 1941, relative to natives, citizens, denizens or subjects of Japan are hereby incorporated in and made a part of this proclamation, and shall be applicable to alien enemies defined in this proclamation.

This proclamation and the regulations herein prescribed shall extend and apply to all land and water, continental or insular, in any way within the jurisdiction of the United States.

In witness whereof, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

Done at the City of Washington this 8th day of December, in the year of our Lord nineteen hundred and forty-one, and of the Independence of the United States of America the one hundred and sixty-sixth.

[SEAL] FRANKLIN D ROOSEVELT

By the President:

CORDELL HULL,
Secretary of State.

Proclamation 2655, issued by President Truman on July 14, 1945, provides (10 Fed. Reg. 8947):

A PROCLAMATION

Whereas section 4067 of the Revised Statutes of the United States (50 U. S. C. 21) provides:

"Whenever there is a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted, or threatened against the territory of the United States by any foreign nation or government, and the President makes public proclamation of the event, all

natives, citizens, denizens, or subjects of the hostile nation or government, being of the age of fourteen years and upward, who shall be within the United States and not actually naturalized, shall be liable to be apprehended, restrained, secured, and removed as alien enemies. The President is authorized, in any such event, by his proclamation thereof, or other public act, to direct the conduct to be observed, on the part of the United States, toward the aliens who become so liable; the manner and degree of the restraint to which they shall be subject and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those who, not being permitted to reside within the United States, refuse or neglect to depart therefrom; and to establish any other regulations which are found necessary in the premises and for the public safety;"

Whereas sections 4068, 4069, and 4070 of the Revised Statutes of the United States (50 U. S. C. 22, 23, 24) make further provision relative to alien enemies;

Whereas the Congress by joint resolutions approved by the President on December 8 and 11, 1941, and June 5, 1942, declared the existence of a state of war between the United States and the Governments of Japan, Germany, Italy, Bulgaria, Hungary, and Rumania;

Whereas by Proclamation No. 2525 of December 7, 1941, Proclamations Nos. 2526 and 2527 of December 8, 1941, Proclamation No. 2533 of December 29, 1941, Proclamation No. 2537 of January 14, 1942, and Proclamation No. 2563 of July 17, 1942, the President prescribed and proclaimed certain regulations governing the conduct of alien enemies; and

Whereas I find it necessary in the interest of national defense and public safety to prescribe regulations additional and supplemental to such regulations:

Now, therefore, I, Harry S. Truman, President of the United States of America, acting under and by virtue of the authority vested in me by the Constitution of the United States and the aforesaid sections of the Revised Statutes of the United States, do hereby prescribe and proclaim the following regulations, additional and supplemental to those prescribed by the aforesaid proclamations:

All alien enemies now or hereafter interned within the continental limits of the United States pursuant to the aforesaid proclamations of the President of the United States who shall be deemed by the Attorney General to be dangerous to the public peace and safety of the United States because they have adhered to the aforesaid enemy governments or to the principles of government thereof shall be subject upon the order of the Attorney General to removal from the United States and may be required to depart therefrom in accordance with such regulations as he may prescribe.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this 14th day of July in the year of our Lord nineteen hundred and forty-five and of the Independence of the United States of America the one hundred and seventieth.

By the President:

[SEAL] HARRY S. TRUMAN.

JAMES F. BYRNES,
Secretary of State.

APPENDIX C

Regulations of the Attorney General (10 Fed. Reg. 12189) pursuant to Presidential Proclamation 2655:

TITLE 28—JUDICIAL ADMINISTRATION

CHAPTER I—DEPARTMENT OF JUSTICE

Part 30—Travel and Other Conduct of Aliens of Enemy Nationalities

REMOVAL OF ALIEN ENEMIES FROM THE U. S.

Sec.

30.71 Removal from the United States of alien enemies.
30.72 Order of the Attorney General.
30.73 Service of removal order on alien enemy.
30.74 Thirty-day period for voluntary departure.
30.75 Involuntary removal from the United States.

Authority: §§ 30.71 to 30.75, inclusive, issued under R. S. 4067; 50 U. S. C. 21.

§ 30.71 *Removal from the United States of alien enemies.*—The Proclamation of the President of the United States, No. 2655 (10 F. R. 8947), dated July 14, 1945, provides in part:

"All alien enemies * * * interned within * * * the United States * * * who shall be deemed by the Attorney General to be dangerous to the public peace and safety of the United States because they have adhered to the aforesaid enemy governments or to the principles of govern-

ment thereof shall be subject upon the order of the Attorney General to removal from the United States and may be required to depart therefrom in accordance with such regulations as the Attorney General may prescribe."

§ 30.72 *Order of the Attorney General.*—When a determination has been made by the Attorney General that an interned alien enemy is deemed to be dangerous to the public peace and safety of the United States because he has adhered to an enemy government or to the principles of government thereof, an order will be signed by the Attorney General directing that the said alien enemy depart from the United States within thirty (30) days after notification of the order and that, if he fails or neglects so to depart, the Commissioner of Immigration and Naturalization is to provide for the alien enemy's removal to the territory of the country of which he is a native, citizen, denizen or subject.

§ 30.73. *Service of removal order on alien enemy.*—A copy of the Attorney General's order of removal will be delivered to the alien enemy at the place where he is interned.

§ 30.74. *Thirty-day period for voluntary departure.*—An alien enemy who is the subject of a removal order shall have thirty (30) days after receiving notification of the removal order to depart from the United States. Unless the public safety otherwise requires, the Commissioner of Immigration and Naturalization is authorized to release such alien enemy from internment under appropriate parole safeguards in order that the alien enemy may settle his personal and business affairs, provide for the recovery, disposal, and re-

moval of his goods and effects, and make arrangements to depart from the United States.

§ 30.75 *Involuntary removal from the United States.*—In the event that an alien enemy, who is the subject of a removal order, fails or neglects to depart from the United States within the above-mentioned thirty-day period, the Commissioner of Immigration and Naturalization will take the alien enemy into custody and will provide for his removal to the territory of the country of which he is a native, citizen, denizen or subject, as soon as transportation is available.

Approved: September 26, 1945.

TOM C. CLARK, *Attorney General.*

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